



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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ULLB, 3rd Floor  
Washington, D.C. 20536

File: WAC 98 148 52290 Office: California Service Center Date:

AUG 9 2000

IN RE: Petitioner:  
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER

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prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of integrated circuits. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary as a senior device technology engineer. The beneficiary began working for the petitioner in January 1997, and received his doctoral degree [REDACTED]

[REDACTED] in May of that year. The director determined that the petitioner had not established (1) that the beneficiary had at least three years of qualifying research experience, (2) the membership requirements of an association of which the beneficiary is a member, and (3) that the beneficiary's research is generally recognized as outstanding within the academic field.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. . . .

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field . . . ; and

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

This decision will first address the issue of whether the beneficiary's research is generally recognized as outstanding. To establish that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition, 8 C.F.R. 204.5(i)(3)(i) lists six criteria, of which the petitioner must meet at least two.

One of these criteria is "[d]ocumentation of the alien's membership in associations in the academic field which require outstanding achievements of their members." The director asserted that, although the beneficiary is a member of the [REDACTED] the petitioner has not established that the [REDACTED] requires outstanding achievements of its members. On appeal, counsel observes that the petitioner has never claimed that the beneficiary is a member of [REDACTED] or that [REDACTED] requires outstanding achievements of its members. The record shows only that the beneficiary's work has appeared in [REDACTED] publications. Thus, this portion of the denial rests on a refutation of a claim which the petitioner simply did not make.

The petitioner has, however, claimed to have met the following four regulatory criteria.

*Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.*

The record contains excerpts from seven articles which cite the beneficiary's work. Three of these articles are by [REDACTED] who had previously worked with the beneficiary at [REDACTED]. Counsel states that these articles "contain either references to or discussions of [the beneficiary's] work." Six of the articles contain no mention of the beneficiary apart from bibliographic footnotes referencing the beneficiary's articles. The remaining article, by [REDACTED] precedes such a footnote with the sentence "[a] study of the high temperature performance of [REDACTED] lateral power devices has also been published by [the beneficiary] et al." These articles are not "published material . . . about the alien's work"; they are articles in the alien's field which cite previous articles by the alien beneficiary as well as similar articles by many other researchers. There is no indication that the articles were written in direct response to the beneficiary's articles, to discuss specifically the beneficiary's work in the field, or to report confirmation of hypotheses first presented by the beneficiary.

*Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.*

Counsel notes that the beneficiary "has been invited to referee articles" in several journals. Counsel asserts that such invitations attest to "a person's expertise in the field." The record shows that the first such invitations arrived in the last months of 1994, before the beneficiary had had a chance to make any sort of impact through his doctoral studies (which had just begun in August 1994). Thus, either the petitioner had achieved an outstanding reputation by the time he finished his master's degree, or else manuscript review is something of a routine duty for researchers holding master's degrees. The record supports the second of these two options, as explained below.

Several invitation letters instruct the chosen reviewer to pass the manuscript on to "an interested colleague" if the invitee is unable to perform the review. If one need only be "an interested colleague" to review these papers, then peer review is clearly not limited to "outstanding" researchers. Almost all of the review invitations in the record are, in fact, addressed not to the beneficiary but to an [REDACTED] professor [REDACTED] who evidently passed them on to the beneficiary. The beneficiary's performance of these reviews demonstrates that [REDACTED] was too

busy to do them, but not that the beneficiary enjoys international recognition. There is no indication that performance of peer review is restricted to internationally known researchers. Furthermore, because peer review is often anonymous, one does not necessarily enhance one's reputation by performing such reviews.

The purpose of the regulatory criteria is to demonstrate that an alien is internationally recognized as outstanding. It is, therefore, an unacceptably low standard to assert that every researcher who presents opinions about the work of other researchers satisfies this criterion.

*Evidence of the alien's original scientific or scholarly research contributions to the academic field.*

Counsel observes that [REDACTED] has sought four U.S. patents arising in whole or in part from the beneficiary's work, and that the petitioner intends to file for five such patents. The petitioner's initial filing did not show that any patents had actually been issued, or that issuance of a patent brings with it international recognition.

Three witness letters accompany the petition. [REDACTED], as an associate professor at [REDACTED] where he served on the beneficiary's M.S. and Ph.D. committees. [REDACTED] states that the beneficiary's "research was in the area of power semiconductor devices and Integrated Circuits (IC's)," and that the beneficiary's doctoral dissertation dealt with dielectric isolation ("DI") technology used to separate logic devices from power devices in power ICs. [REDACTED] then offers general comments about power ICs and their use of DI, and states:

[The beneficiary] proposed, simulated and experimentally demonstrated several innovative concepts and new structures in lateral power devices . . . in which he utilized dielectric isolation to overcome the limitations of junction isolation. This enabled him to demonstrate a significant improvement in the performance and efficiency of the power semiconductor devices. . . . [H]e developed and implemented a complete 9-mask DI Smart Power IC process. He also proposed the novel concept of using the step drift doping profile for DI power IC's to achieve near ideal breakdown voltage with reduced process complexity.

[REDACTED] a fellow in the petitioner's [REDACTED] describes the beneficiary's current work for the petitioner:

Non-volatile (flash) memory continues to be the fastest growing memory technology in the world with numerous applications. . . . [The petitioner] is currently the global

leader in the development of advanced deep sub-micron flash memory technology. . . .

At present, [the beneficiary] is involved in the research and development of state-of-the-art flash memory device and process technology at [the petitioning company]. The beneficiary's unique expertise in semiconductor device/process development, device physics and modeling is essential to fully understand the various design issues involved in flash technology.

The petitioner's reliance on the beneficiary's expertise is irrelevant to the degree of international recognition the beneficiary has earned through his work. [REDACTED] further discusses ongoing work which has not yet yielded final results. An ongoing project which has not yet yielded demonstrable contributions cannot satisfy this criterion.

Regarding work which the beneficiary has completed, [REDACTED] states:

With swift and continuous progress, the pitch size (smallest defined dimension on chip) for flash cells keeps shrinking. . . . [The beneficiary] has made significant contribution[s] to the development of 0.35 $\mu$ m flash technology. . . . However, device scaling also brings inherent limitations of short channel effects . . . [which] cause a substantial increase in undesirable background leakage current during programming and erase operations which results in a tremendous reduction in the programming in erase speed and efficiency. [The beneficiary's] contribution to developing and demonstrating the innovative concept of utilizing the source bias during flash memory programming and erase operations has helped to overcome these limitations. . . . He was able to demonstrate more than an order of magnitude improvement in programming and erase speed, efficiency by using the technique of source bias which almost eliminates any background leakage current.

The stated purpose of the regulatory criteria is to establish whether the beneficiary has an international reputation as an outstanding researcher. Therefore, it only stands to reason that the evidence submitted under these criteria should demonstrate international recognition. Any research contribution which does not duplicate existing research is, in some way, "original," but originality does not imply significance, nor is it any guarantee or reliable indicator of international recognition. Documentation of the international response to the beneficiary's work carries far greater weight than evidence merely establishing the existence of that work.

The third witness is [REDACTED] in Santa Clara, California. [REDACTED] states that he first met the beneficiary at [REDACTED] in 1992, the year the beneficiary began his graduate studies. [REDACTED] states:

I have found [the beneficiary's] research . . . to be of great interest and value in enhancing the performance and efficiency of smart power integrated circuits (ICs) for applications in automotive, aerospace and consumer electronics. . . .

I believe [the beneficiary] has made significant and important contributions to the research of dielectrically isolated semiconductor devices for power integrated circuits. With his unique experience in semiconductor devices physics and process design, I am fully confident that [the beneficiary] is eminently capable of outstanding research in the semiconductor industry.

The letters discussed above are from one of the beneficiary's former professors, the petitioning employer, and an individual who first met the beneficiary in 1992, the year the beneficiary began studying for his master's degree. The opinions of these witnesses regarding the beneficiary's work do not show that the beneficiary's work is widely viewed as significant by researchers who have not met or worked directly with the beneficiary. The assertion that the beneficiary is "capable of outstanding research" does not show that the international research community believes the beneficiary's existing body of work to be outstanding.

*Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.*

The beneficiary is the co-author of four published articles and five conference presentations, some of which have appeared in international publications. The Service cannot ignore that publication is more common in some fields than in others, and that publication is not synonymous with impact or recognition. The burden is on the petitioner to show that his published work is generally recognized as outstanding.

The statute limits eligibility to outstanding researchers with international recognition. The petitioner cannot simply define the beneficiary into eligibility by asserting that, for instance, every internationally-published researcher with original accomplishments to his or her credit must be an "outstanding researcher." Given that scholarly articles are often rejected because they are not original (as the beneficiary's own review notes show), an article accepted for publication in an international journal will likely contain original research. By this logic, authorship of a single

article so published would meet two of the above criteria. Such a standard, obviously, is impermissibly low.

The other issue in this proceeding is whether the beneficiary has accumulated the three years of research experience required by section 203(b)(1)(B)(ii) of the Act. 8 C.F.R. 204.5(i)(3)(ii) describes the necessary experience:

Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

The beneficiary in this case received his Ph.D. from [REDACTED] on May 10, 1997, less than a year before this petition was filed on April 30, 1998. Prior to receiving this degree, the beneficiary was a student for his entire adult life. Therefore, the petitioner must demonstrate that the beneficiary has over two years of student research experience which the academic field has recognized as outstanding.

The director requested additional evidence that the petitioner has met this burden. In response, the petitioner has submitted copies of previously submitted documents and two new letters. One of these letters is the second from [REDACTED] who states that the publication and presentation of the beneficiary's work in international journals and conferences demonstrates the outstanding nature and international acceptance of the beneficiary's work. Officials from these journals do not corroborate the assertion that only outstanding work appears therein.

[REDACTED] adds that the beneficiary "has been asked to referee several articles . . . [which] further demonstrates that [the beneficiary's] research work has been recognized as outstanding in the field." [REDACTED] fails to acknowledge that, in almost every instance, it was a NCSU professor who was invited to referee the papers, and who passed the papers on to the beneficiary. These actions demonstrate the professor's faith in the beneficiary's aptitude, but cannot reasonably be construed as having any greater significance.

The other letter is from [REDACTED] senior scientist at [REDACTED] states that he first learned of the beneficiary through his publications,

and then met him at conferences. [redacted] refers to the beneficiary's work as "groundbreaking" and credits him with "important and vital contributions." Like other witnesses, [redacted] discusses the beneficiary's review of articles submitted for publication, but does not appear to be aware that most of the review invitations were directed to someone other than the beneficiary.

None of these witnesses (all of whom are U.S.-based or worked with the beneficiary in the U.S.) provide first-hand, verifiable evidence to show that the beneficiary enjoys significant recognition outside of the United States. Without such evidence, there is nothing concrete to show that whatever recognition the beneficiary has earned is "international." Therefore, the director denied the petition.

On appeal, counsel claims "the research experience that [the beneficiary] gained through his employment with [redacted] from August 1992 until January 1997 was not conducted as 'part of degree requirements' as claimed by the Service Center." Counsel justifies this claim by observing that [redacted] paid the petitioner for his work, and therefore performed this research as an employee rather than a student. Counsel adds:

Although [the beneficiary] was able to use the research he conducted in connection with this employment in the completion of his thesis paper . . . the focus of the research was not dictated by the academic program or required for its completion.

Counsel submits no documentation from [redacted] to establish that the petitioner's paid research work was entirely surplus to the beneficiary's degree requirements; that is, that the beneficiary would have received his degree in the same amount of time even if he had not conducted the research for which he was paid. It remains that the beneficiary would not have received a degree without a doctoral thesis, and counsel admits that the beneficiary used his paid research in the preparation of his thesis. Therefore, the beneficiary's paid research was "part of degree requirements." It is beside the point that the beneficiary, rather than [redacted] chose the specific "focus of the research"; even undergraduates are given some degree of latitude in selecting research topics.

Counsel asserts that, even if the beneficiary's research was part of his degree requirements, "recognized experts" have attested to the importance of the beneficiary's research. As explained above, most of the "recognized experts" cited by counsel represent the petitioner itself and individuals who have worked with the beneficiary at [redacted]. These witnesses, and one additional individual [redacted] have enthusiastically embraced the

beneficiary's research work. The record does not show this same reaction throughout the international community. Occasional citations by independent researchers show acceptance of the beneficiary's work, but do not inherently elevate that work above the research of countless others who have published internationally.

The only new evidence submitted on appeal is documentation of a United States patent issued to the petitioner, listing the beneficiary as the fourth of eight inventors. The patent is dated February 23, 1999, after the petition's April 1998 filing date. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Furthermore, a patent is not an indication of international recognition.

Counsel asserts that the director based the denial "on the claim that the alien must be pursuing the same research that he conducted while working on his advance[d] degree." Counsel cites no specific passage of the director's decision to support this assertion, and review of the decision itself yields no language which could be construed in the manner counsel implies.

The record shows that the petitioner and the beneficiary's professors think highly of the beneficiary's work, and that the beneficiary's efforts have attracted some degree of notice on a wider scale. The record stops short, however, of demonstrating a consistent pattern to show that the beneficiary's work has earned international recognition as being outstanding. Assertions about the value or potential applications of the beneficiary's research do not establish or imply international recognition.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of electronic engineering. The beneficiary, at the time of filing, had less than one year of non-student employment experience as a researcher. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.